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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

GUILIO BRUNI,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

SUMMARY OF THE MATTER INVOLVED

To the Honorable Chief Justice and Associate Justices of the United States:

The petitioner was found guilty by a jury of passing and uttering falsely made and counterfeit Federal Reserve Bank $20 notes, and after a denial of motions for a new trial and in arrest of judgment, the Court sentenced petitioner to serve five (5) years and also assessed a fine of $5,000 on each of Counts II and III; said sentences to run concurrently.

FACTS

The record discloses that an indictment was returned in six (6) counts charging the petitioner and one John G. Johnson as follows:

Count I charged petitioner and one John G. Johnson with conspiracy to violate Section 462, Title 18, United States Code, in that they falsely conspired to falsely make and counterfeit obligations of the United States;

Count II charged petitioner with intent to defraud and having passed and uttered a falsely made and counterfeit obligation of the United States;

Count III charged petitioner with intent to defraud and pass and utter a certain counterfeit obligation of the United States;

Counts IV, V, and VI charged one John G. Johnson with intent to defraud and pass and utter a certain Federal obligation of the United States.

John G. Johnson withdrew his plea of not guilty and pleaded guilty to Counts IV, V, and VI of the indictment, and testified against the petitioner, Giulio Bruni.

Count I of the indictment was dismissed on motion of the Government.

Several witnesses, including Johnson, testified for the Government and the gist of their testimony was that on or about September 13, 1964, at Lowell, Dodge County, Wisconsin, petitioner did utter and pass a falsely made and counterfeit obligation of the United States to one Marie Rahn; and again on said date at Astico, Dodge County, Wisconsin, the petitioner did utter and pass a falsely made and counterfeit obligation of the United States to one Herbert Monthie. There was also testimony

by Secret Service Agents to the finding of two (2) counterfeit $20 Federal Reserve notes in the home of the petitioner.

An appeal from the verdict of guilty and judgment of conviction was taken. On March 18, 1966, the Circuit Court of Appeals affirmed the conviction. Petitioner filed a petition for rehearing which was denied on April 27, 1966. The mandate was stayed until June 15, 1966.

The opinion of the Circuit Court of Appeals is published herein in full at pages 1 through 9, Appendix.

QUESTIONS PRESENTED

Should a conviction be sustained upon the evidence presented by the Government in this case?

STATUTES INVOLVED

18 U.S.C.A. 472

UTTERING COUNTERFEIT OBLIGATIONS OR SECURITIES

"Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempt to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both. June 25, 1948, c. 645, 62 Stat. 705."

JURISDICTION

The date of the judgment to be reviewed is April 15, 1965. Appellant's petition for rehearing was denied April 27, 1966. Jurisdiction to issue the Writ is under the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C.A., Sec. 1254) Based on Title 28, U.S.C. 1940 Ed. Sec. 346 and 347 (March 3, 1911, C.231, Sec. 239, 240, 36 Stat. 1157; Feb. 13, 1925, C. 229, Sec. 1, 43, Stat. 939; Jan. 1, 1928, C. 14, Sec. 1, 45, Stat. 54; June 7, 1934, C. 426, 48 Stat. 926) (From Revisors Note, Title 28, U.S.C.A. Judiciary and Judicial Procedure, Sec. 1254, P. 42).

REASONS FOR ALLOWANCE OF THE WRIT

1. That the Government failed to prove the defendant guilty beyond a reasonable doubt.

2. That the District Court committed error in allowing prejudicial evidence to go to the Jury.

3. That the District Court committed error in its oral instruction to the Jury during the trial.

ARGUMENT

The burden of proving the defendant, Dr. Giulio Bruni, guilty rests upon the Government.

Dr. Bruni was tried separately and maintained his plea of not guilty.

The Government proceeded to prove Dr. Bruni guilty by the testimony of John G. Johnson, a co-defendant, who pleaded guilty and testified for the Government; and the testimony of nineteen witnesses, including co-defendant Johnson.

Johnson says that Bruni schemed to print U.S. currency and together they shopped and purchased a $400 printing press, inks of various colors, reams of bond paper, and paper cutter; that Dr. Bruni produced plates that would print U.S. currency; that after several unsuccessful attempts, they abandoned the whole scheme; that Dr. Bruni then purchased counterfeit money and showed it to Johnson; that they were going to buy and pass sufficient fake money to amass $3 million, ship it to Italy where a banker was to convert it into U.S. genuine currency. They then proceeded to pass the fake currency in the Chicago area and did the same on the way up to the Wisconsin Dells and back to Chicago. This was on September 13, 1964.

The only personal contact with Dr. Bruni by these victims, if their story is true, was made on September 13, 1964, at about 8:30 or 9:00 p.m. in the evening, which lasted only a few minutes; not one of these witnesses gave the police any description of Dr. Bruni or his Chrysler automobile so that the police radio and teletype system could broadcast the information for the apprehension of Bruni and Johnson.

Positive identification of Dr. Bruni by the testimony of the Milwaukee witnesses should be scrutinized with extreme care. (*Fisher* v. *U.S.*, 231 F.2d 99). No class of testimony is more uncertain and less to be relied upon than that on identity. The possibility of human error in absence of prior familiarity with the defendant is to be proven by that degree of moral certainty that amounts to proof beyond a reasonable doubt so as to preclude any probability of mistake. The reliability of such testimony depends upon the impression obtained by such witnesses in haste; in a matter of seconds in which to observe the person. (*Sibona* v. *U.S.*, 294 Fed. 272.)

Another segment of the Government's case which was prejudicial to the defendant was the testimony of Neman Ciochina and Richard Sheridan, two Secret Service Agents, who placed Dr. Bruni under arrest on the night of September 24, 1964, outside his home in River Forest, Illinois. They testified that they received permission to search his home. After searching the entire premises for several hours, Ciochina opened a drawer of a cabinet in the sun room of the Doctor's house when two counterfeit $20 notes fell out of a cabinet. He testified these two $20 notes bore the same serial numbers as the bills passed in Lowell, Astico, and Columbus, Wisconsin and that said notes bore the same serial numbers as the notes found in Johnson's home the previous day. At the time of this discovery, Dr. Bruni was not present in the same room but Agent Sheridan called Dr. Bruni into the room to show him what had taken place. Dr. Bruni denied then and there having any knowledge of these counterfeit bills.

The mere passing of counterfeit bills is not sufficient to show knowledge on the part of the defendant that the bills allegedly passed were counterfeit. *U.S.* v. *Litberg*, 175 F.2d 20; *U.S.* v. *Ruffino*, 67 F.2d 440.

Nor does the naked act of possessing counterfeit money necessarily give rise to the legitimate inference of guilty knowledge. *Price* v. *U.S.*, 70 F.2d 467; *Marson* v. *U.S.*, 203 F.2d 904.

Knowledge or belief of counterfeit character is an essential element of crime of passing counterfeit obligations of the United States. *Zottarelli* v. *U.S.*, 20 F.2d 795; *U.S.* v. *Carld*, 105 U.S. 611; 26 L. Ed. 1135; *U.S.* v. *Kelley*, 186 F.2d 598.

Where Government had adduced direct evidence that the defendant has possessed and has passed counterfeit bank notes at certain road houses, they still had the burden to prove his guilty intent beyond a reasonable doubt. *Carrullo* v. *U.S.*, 184 F.2d 743.

Another error committed by the District Court was the remarks and ruling by the Court on objections by defendant to certain evidence introduced by the prosecution as follows:

Mr. Mulligan:

Q. Do you have an opinion as to the genuine or counterfeit character of those bills?

A. Yes, sir.

Mr. Bulger: Objection, your Honor.

A. Yes, sir, your Honor, I do.

Mr. Bulger: I object to the question and I object to the answer.

The Court: On what grounds?

Mr. Bulger: On the ground there is no evidence that connects this defendant with the particular exhibits.

The Court: The jury will have been instructed once, and I will instruct you again (orally), that the defendant is on trial accused of passing and uttering two counterfeit obligations only, one at Lowell, Dodge

County, and the other at Astico, Dodge County. If he passed or had anything to do with passing obligations elsewhere, it has nothing to do with this case. That evidence was received only on the question of his knowledge or intent, only on that question.

Mr. Bulger: If the court please, on the basis of what you have just stated to the jury, which I believe is prejudicial, I now move to declare a mistrial.

The Court: That motion will be denied.

Later, the Court evidently thought the motion for a mistrial had merit. He then gave the following oral instruction to the jury:

The Court: Members of the jury, it just occurred to me that a while ago I did not give you a complete instruction when I was talking about incidents other than the alleged incidents at Lowell and Astico. If, and only if, the Government has convinced you beyond a reasonable doubt that the defendant passed counterfeit securities at either of the two places named in the indictment.

The Court realized the error and attempted to correct it. We contend that the implication and suggestion made to the jury by the Court was prejudicial and there is no way to assess what effect it had upon the jury.

The last exhibits, 21 to 26, inclusive, were counterfeit $20 bills. There was no evidence that Dr. Bruni had any connection with them leaving an inference with the jury that Dr. Bruni had passed those also.

The Court committed further error when it allowed a Rogues' Gallery of pictures marked Government's Exhibits Nos. 4 through 12, inclusive, into evidence and allowed said pictures to go to the jury room with the jury.

In *United States* v. *Palermo*, 250 F. 2d 872, at page 881, the Court said:

> "It is well settled that . . . the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials in the Federal Courts."

Citing *Ballenbach* v. *United States*, 326 U.S. 607, 66 S. Ct. 402; *Wilson* v. *United States*, 250 F.2d 312.

In *Ribaste* v. *United States*, 44 F.2d 21, the defendant moved for acquittal. In reviewing the evidence, the Court said at page 22:

> "It will be thus seen, that it is conceded by counsel for the Government, that the evidence against Ribaste was wholly circumstantial. The facts and circumstances proved and relied upon by the Government to sustain Ribaste's conviction must therefore not only be consistent with his guilt but must be inconsistent with his innocence."

Union Pacific Coal Co. v. *United States*, 173 F. 737; *Edwards* v. *United States*, 7 F.2d 357; *Salinger* v. *United States*, 23 F.2d 48; *Spaletto* v. *United States*, 39 F.2d 782; *Grontello* v. *United States*, 3 F.2d 117.

The defendant in this case did not receive a fair trial. The prosecution was allowed to introduce evidence which had no bearing on the charge in this indictment.

This other evidence of similar offenses (Government's Exhibits 21 to 26, inclusive) but not committed by Dr. Bruni, was prejudicial and error. *Boyd* v. *United States*, 142 U.S. 404; 12 S. Ct. 292; *Hall* v. *United States*, 150 U.S. 176; 14 S. Ct. 22.

Evidence of a vague and uncertain character regarding such other alleged offenses is not admissible. *Bak* v. *State*, 110 N.E. 456; *State* v. *Hyde*, 136 S.W. 316; *People* v. *Sharp*, 14 N.E. 319; *Fish* v. *United States*, 215 Fed. 545.

Evidence of this character necessitates the trial of matters collateral to the main issues, is exceedingly prejudicial, and is subject to being misused; *Farkas* v. *United States*, 2 F.2d 644; *Weil* v. *United States*, 2 F.2d 145.

CONCLUSION

Wherefore, petitioner prays that this Court allow this Petition for Certiorari and grant the Writ of Certiorari to the Circuit Court of Appeals, Seventh Circuit.

Respectfully submitted,

JOSEPH I. BULGER
Attorney for Petitioner.

APPENDIX

Corrected.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

SEPTEMBER TERM, 1965—JANUARY SESSION, 1966

No. 15176
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GIULIO BRUNI,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

March 18, 1966

Before HASTINGS, *Chief Judge,* KNOCH and KILEY, *Circuit Judges.*

KNOCH, *Circuit Judge.* The indictment in this case originally consisted of six counts. The first count dealt with conspiracy. It was dismissed prior to trial. Defendant-appellant, Giulio Bruni, was charged in Counts 2 and 3 with passing and uttering falsely made and counterfeit $20 Federal Reserve Bank Notes at Lowell and Astico in Dodge County, Wisconsin, on September 13, 1964.

Counts 4, 5 and 6 dealt with charges against a co-defendant, John G. Johnson, who after being granted a separate trial, pleaded guilty and testified for the government at Dr. Bruni's trial.

The jury found Dr. Bruni guilty. His motion for a new trial was denied. He was sentenced to serve five years and to pay a fine of $5,000 on each count, the sentences to run concurrently, making a total sentence of five years and a total fine of $10,000. This appeal followed.

Defendant asserts that the government failed to prove him guilty beyond a reasonable doubt, particularly with regard to the element of intent and guilty knowledge; that the Trial Judge committed prejudicial errors in admission and exclusion of certain evidence, in denying his motion for acquittal at the close of all the evidence, and in making prejudicial remarks within the hearing of the jury. He contends that his conviction was based on false identifications by alleged victim-witnesses, and false and perjured testimony by his alleged accomplice, John Johnson, and, further, that the two counterfeit notes which allegedly fell out of a cabinet drawer in his residence were placed there either by the finders, two special agents of the Secret Service, or by John Johnson, who had access to the premises.

Defendant attacks the credibility of the witnesses for the government charging some of them with honest mistakes and others, particularly John Johnson, with deliberate perjury. The jury as trier of the facts determined the issues respecting credibility. *Glasser* v. *U.S.*, 315 U. S. 60, 80 (1942). Their verdict must be sustained if supported by substantial evidence including reasonable inferences therefrom as viewed in the light most favorable to the gov-

ernment. *U. S.* v. *Mims*, 7 Cir., 1965, 340 F. 2d 851, 852, cert. den. 381 U. S. 913; *U. S.* v. *Armstrong*, 7 Cir., 1964, 337 F. 2d 1015, 1016, and cases there cited, cert. den. 381 U. S. 905.

At the trial, John Gerdt Johnson testified that he was employed by defendant, Dr. Bruni, and another person, at Northlake Hospital from March to September 1964, as janitor, later working in housekeeping and maintenance. He said that he had formerly been a police officer. At the outset, he admitted conviction of a felony in this case. He said he knew Dr. Bruni for about eight years. He related a detailed conversation with Dr. Bruni about acquiring and passing counterfeit money, and described Dr. Bruni's purchase of more than $5,000 in counterfeit $20 bills, all with the same serial numbers and in various stages of completion, some untrimmed and some not fully printed. He stated that the money obtained from passing these was to be used to buy more counterfeit, samples of which Dr. Bruni showed him.

On September 12, 1964, Johnson said he and defendant, Dr. Bruni, drove from Northlake, Illinois, to Wisconsin Dells, Wisconsin, arriving early September 13, 1964, where they passed a number of counterfeit bills, which were provided by the defendant. He said that coming back from Wisconsin Dells that same day, they made numerous stops in towns along the way where they made various small purchases with counterfeit $20 bills.

Harold William Ring testified that he was tending bar in the Blackhawk Tap, Columbus, Wisconsin, on September 13, 1964, and that he sold Dr. Bruni a bottle of beer for a $20 bill, giving him $19 and some change in return; that this was the only $20 bill he took in and that there were no $20 bills in the cash register at the start of busi-

ness. Harold William Ring, Jr., testified that he relieved his father at the bar about 7:00 P.M. and worked until closing time, that he accepted no $20 bills, and that there was only one $20 bill in the day's receipts.

Herbert Edward Monthie testified that between 8:00 and 8:30 P.M. on September 13, 1964, while he was working as part-time bartender in the Shamrock Tavern in Astico, Wisconsin, he sold two cans of beer to the defendant who paid with a new $20 bill and received $19.30 in change. He testified that he had previously received another $20 bill, old and dilapidated, from a local customer known to him, and that these were the only $20 bills he took in that day. He saw defendant leave the premises with the two cans of beer, get into an automobile and go east on Route 16.

Emma Frank testified that she owned the Shamrock Tavern, that she worked on September 13, 1964, during the periods before and after Mr. Monthie was on duty, that she accepted no $20 bills, and that there were none on hand at the start of business that day.

Maurice Clifford Kuenzi testified that on September 13, 1964, at about 8:30 P.M., he and his wife were sitting in their automobile outside of his tavern, the E. & M. Bar in Lowell, Wisconsin. He saw an automobile containing two men come up the east side of the street heading north and stop. Two men got out. One went toward a restaurant across the street. Mr. Kuenzi followed the other man, who had been sitting on the driver's side, and whom he identified as the defendant, into his Tavern, where defendant tried to buy two cans of beer with a $20 bill which Mr. Kuenzi refused to accept. Defendant said he had no change and left. Mr. Kuenzi followed the defendant and saw him enter and then leave Tuffe's Bar about 150 feet

north on the same side of the street, and then return to the automobile.

Mrs. Harold Rahn testified that she and her husband operated Tuffe's Bar, about half a block from the Kuenzi Tavern in Lowell, Wisconsin, that she was tending bar there about 8:30 P.M. on September 13, 1964; that there were no $20 bills in the cash register; and that she sold defendant two cans of beer for 55 cents, giving him change for a $20 bill which was the only $20 bill taken in that day. Mr. Rahn was present at the time. At the trial, he also identified defendant as the purchaser who paid for two cans of beer with a $20 bill.

Roger Kreitzman testified that he was part-time Chief of Police at Lowell; that after a conversation with Mr. Kuenzi, he stopped a late model Chrysler Imperial on the outskirts of Lowell. He said that the automobile bore an Illinois license plate beginning "LB"; that the defendant was driving; that there was another man in the car; and that the defendant showed a driver's license and identification as an Illinois physician which indicated a first initial "G". He allowed the car to go on.

Typical of defendant's attack on the credibility of the evidence is his comment that allegedly knowing of Mr. Kuenzi's suspicions and armed with a description of the two men seen in the town, Chief Kreitzman nevertheless made no effort to detain defendant and his companion for investigation, merely telling them that he was looking for a stolen automobile with an Illinois license plate, and allowing them to depart when the driver identified himself as a physician. From these circumstances, defendant concludes that neither Mr. Kuenzi nor Chief Kreitzman really suspected Dr. Bruni of passing counterfeit money at the time. Chief Kreitzman was examined on the information

available to him at the time and his intentions with respect to the two strangers seen in the town. Evidently his explanation was satisfactory to the jury who were the triers of the facts.

Jerrold Nordin Fehrman testified that he was employed as part-time helper in Miller's Standard Service Station at Oconomowoc, Wisconsin. He said that about 9:00 P.M. a late model Chrysler, with two male occupants drove up. He identified defendant as the driver. He said that the passenger asked for $2 worth of gas, for which he offered a $20 bill, series G. Mr. Fehrman said he wanted to check a list of known counterfeit bills, but when the passenger told him those listed bills were a "B" series, he gave him $17 in bills and was making change for the rest, while the passenger made a telephone call. He consulted another gas station attendant who also said that the known counterfeit bills were a B series. Meanwhile Mr. Fehrman found the list. Both Dr. Bruni and his passenger companion came in and checked the $20 bills they were carrying against this list. The companion then asked to see the bill he had previously given Mr. Fehrman, took it back and substituted another $20 bill for it. Mr. Fehrman said he knew it was another bill because of the difference in crispness. He also wrote down the automobile license number which he turned in to a police officer who came over to see him after he had called the police department across the street. This was later proved to be the same number as the license issued to defendant.

John Johnson testified that after he had given the gas station attendant a $20 bill which Dr. Bruni had provided, he telephoned his home; that while he was still in the telephone booth, Dr. Bruni came to tell him that the gas station attendant had written down the license number and that Johnson should recover the $20 bill, which John-

son did by switching it with one of five good $20 bills he had received from Dr. Bruni the day before. He testified further that several days later Dr. Bruni gave him some counterfeit money to burn because one of the makers of the counterfeit had been caught passing a $20 bill. When arrested September 23, 1964, he still had some counterfeit $20 bills on his person and some in a dresser at his home, which were recovered by the Secret Service agents who were armed with a search warrant.

Special Secret Service Agent Nema Ciochina testified that he participated with three other special agents in the arrest of Dr. Bruni at his home on September 24, 1964, and in the subsequent search of the premises, where he found two untrimmed counterfeit bills in a cabinet. Special Agent Richard Sheridan testified that he was present when Agent Ciochina found the two bills.

Richard A. Jordan, assistant to the Special Agent in Charge of the U. S. Secret Service Office in Chicago, testified that on September 24, 1964, and again on February 8, 1965, Dr. Bruni denied having been in Wisconsin during the past two or three years.

Special Agent John A. Sokoll, whose duties include investigation of counterfeits, and who has received special training in detection of counterfeit money, testified that the $20 bills tendered by defendant in the Blackhawk Tap, the Shamrock Tavern, and Tuffie's Bar, and the bills recovered in John Johnson's and Dr. Bruni's homes, were all counterfeit and produced from the same plates.

Defendant argues that all these witnesses who saw the passers of the counterfeit money only fleetingly identified defendant not from an independent recollection but from suggestion planted by overzealous Secret Service Agents who showed the witnesses pictures of Dr. Bruni and who

pointed him out to the various witnesses before and during the trial. Some of the witnesses testified that they recognized Dr. Bruni when they saw him; that he had not first been pointed out to them. Several witnesses said they had been shown a number of pictures from which they had picked out Dr. Bruni's. They denied seeing any markings which led them to make their selection. To rebut the suggestion on cross-examination that there was something improper about the display of the pictures, the government called the investigating agent concerned who testified over defendant's objection as to the manner in which the photographs were used. The actual pictures were admitted in evidence. The jurors were allowed to examine them and to take them into the jury room. We find no abuse of discretion in this regard. There was ample evidence that the witnesses were shown a spread of photographs which included those of Dr. Bruni and John Johnson. The credibility of the identifications presented an issue for determination by the jury.

We are satisfied that the evidence supports the verdict of the jury returned on February 18, 1965.

Defendant's motion for a new trial was not filed until March 24, 1965. Rule 33, Federal Rules of Criminal Procedure, allows five days to file a motion for new trial on grounds other than newly discovered evidence. Defendant's motion was based on the alleged insufficiency of the evidence. Motions for new trial are addressed to the sound discretion of the Trial Judge. *Dranow* v. *United States,* 8 Cir., 1962, 307 F. 2d 545, 567, and cases there cited. The motion was untimely filed, but, in any event, we find no abuse of discretion in the denial of new trial by the District Court.

Defendant asserts that it was prejudicial error to admit into evidence the government's Exhibits 21 through 26. These comprised the two untrimmed counterfeit $20 bills found in defendant's home, the $20 counterfeit bill received by Mr. Ring in the Blackhawk Tap, and the three counterfeit $20 bills found in the Johnson home. Defendant argues that there was no evidence connecting him with these bills. Two of these bills were found in his home. He was identified as passing one of them. John Johnson testified that he received the other three which were found in his home from Dr. Bruni. A connection between the bills and Dr. Bruni was established by the evidence. The Trial Judge made it clear to the jury in comments and instructions during the testimony and afterward that the defendant was on trial only for passing two counterfeit bills and that evidence of other similar offenses or conduct was admitted only to show knowledge or intent, matters which were and are still contested by the defendant as not proved. We find no error in admission of these exhibits nor in the Court's reminding the jury of the limited purpose for which the evidence was admitted. *U. S.* v. *Iacullo,* 7 Cir., 1955, 226 F. 2d 788, 793, cert. den. 350 U. S. 966; *U. S.* v. *Abraham,* 7 Cir., 1965, 347 F. 2d 395, 397.

We have considered all other points raised by the defendant and have consulted all authorities to which our attention has been drawn. We are convinced that the judgment entered in the District Court must be affirmed.

AFFIRMED

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 182

GUILIO BRUNI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-9) is reported at 359 F. 2d 802.

JURISDICTION

The judgment of the court of appeals was entered on March 18, 1966. A petition for rehearing was denied on April 27, 1966. The petition for a writ of certiorari was filed on May 28, 1966, one day out of

time. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction.

2. Whether the court erred in admitting certain exhibits in evidence.

3. Whether the court erred in its instructions to the jury.

STATEMENT

Petitioner was convicted in a jury trial in the United States District Court for the Eastern District of Wisconsin on Counts II and III of an indictment charging the passing and uttering of $20 counterfeit bills in violation of 18 U.S.C. 472 (App. 3, 9-11).[1] Petitioner was given concurrent sentences of imprisonment for five years and was ordered to pay a total fine of $10,000 (App. 4). On appeal (App. 16-17) the conviction was affirmed.

The evidence showed that on September 11, 1964, petitioner purchased counterfeit $20 bills in the amount of approximately $5,000 to $7,000 (App. 138-142, 171-173). On the evening of September 12 petitioner sprayed both his and co-defendant Johnson's hands to avoid leaving fingerprints on the bills. The

[1] "App." refers to the Defendant-Appellant's Appendix. The conspiracy charge in Count I was dismissed prior to trial. Co-defendant Johnson pleaded guilty to the substantive Counts IV, V, and VI and testified as a government witness (App. 2, 6-9, 11-14, 136-137).

two men then drove from Northlake, Illinois, to the Wisconsin Dells for the purpose of passing the bills (App. 148-149). On the following day both petitioner and Johnson passed bills by making a number of small purchases at taverns and filling stations (App. 151-156, 201-207). One time after Johnson bought gas with a counterfeit bill, petitioner noticed that the attendants were suspicious and told Johnson to switch the bills. Johnson retrieved the $20 counterfeit bill and replaced it with a genuine one (App. 75-77, 94-96, 159-160). The attendant wrote down Illinois license LB7564, petitioner's number (Gov. Ex. 16) (App. 78, 79).

Count III was based on the passing of a bill to one Monthie at a tavern in Astico, Wisconsin (App. 19, 21-22). Monthie testified that he was positive that petitioner was the man who had passed the bill. He had identified petitioner's photograph from a group shown him (App. 25-26).

Count II was based on a bill for two cans of beer in Lowell, Wisconsin (App. 38-39, 49). Both Mrs. Rahn and her husband were positive in their identification of petitioner (App. 39, 42-44, 49, 57). This bill (Gov. Ex. 13), which was the only $20 bill taken in at the bar on that day, was turned over to a police officer by Mr. Rahn (App. 39A, 50).

A few days after the Wisconsin trip, petitioner told Johnson that one of the boys who had been making money for him had been caught. He instructed Johnson to burn some of the counterfeit money, and Johnson did so (App. 162-163, 168). On September 23, 1964, when Johnson was arrested, agents found in a

dresser three $20 counterfeit bills which had been given to Johnson by petitioner (Gov. Ex. 24, 25, 26), along with a printing press, inks and paper (App. 162-164, 217-218).

On September 24, 1964, Secret Service agents arrested petitioner at his house for passing counterfeit notes. When the agents asked petitioner whether he had any counterfeit notes, he invited them to look around since he had nothing to hide (App. 113-114, 122). The agents found two untrimmed counterfeit $20 bills, which fell out when the door of a desk-like cabinet was opened (App. 114-115, 123). At two interviews with a Secret Service agent, petitioner denied that he had been in Wisconsin on the weekend of September 13, 1964, and stated that he had not been there for two or three years (App. 213, 216-217).

Expert testimony disclosed that the $20 bills used to buy beer at taverns in Wisconsin (Gov. Ex. 23, 1, 13), the three $20 bills recovered from Johnson's home (Gov. Ex. 24, 25, 26), and the two untrimmed $20 bills found in petitioner's home (Gov. Ex. 21 and 22) were all counterfeits produced from the same set of plates (App. 235-246A).

ARGUMENT

1. The evidence, as summarized in the Statement, *supra*, was clearly sufficient to support the conviction.

2. There is no substance to petitioner's argument that certain exhibits were inadmissible in evidence.

(*a*) Petitioner had a direct connection with Gov. Exhibits 21 through 26. Exhibits 21 and 22 were untrimmed counterfeit $20 bills found in the search of petitioner's home. Exhibit 23 was a counterfeit $20 bill passed by petitioner in a purchase of September 13, 1964 (not charged as a substantive count). Exhibits 24 through 26 were three counterfeit $20 bills given by petitioner to Johnson and recovered in the search of Johnson's home. These exhibits were admissible as evidence of similar offenses, acts or conduct to show petitioner's knowledge and intent. *Williams* v. *United States*, 272 F. 2d 40, 41-42 (C.A. 8); *United States* v. *Iacullo*, 226 F. 2d 788, 793 (C.A. 7), certiorari denied, 350 U.S. 966; *Kowalchuk* v. *United States*, 176 F. 2d 873, 877-878 (C.A. 6).

(*b*) Nine photographs (Gov. Ex. 4-12), including one of petitioner (App. 83, Gov. Ex. 11), one of Johnson, one of a Secret Service agent, and the others of persons suspected of handling counterfeit money (App. 246A-247) were produced and marked as exhibits only after petitioner had requested the court to order the government to produce them (App. 45-46). Thereafter, petitioner's counsel used the photographs on cross-examination of government witnesses to challenge the credibility of their identifications (App. 54-56, 83, 203-205). It was only after this that the government called the investigative agent as a witness and introduced the photographs in evidence, so that the jury could determine the issue raised by petitioner as to the credibility of the identifications (App. 246A-248, 255-256). In these circumstances, petitioner

cannot complain of the court's ruling admitting the photographs.

3. During the testimony of agent Sokoll, the court overruled a defense objection to the question whether he had an opinion as to whether Gov. Exhibits 21 through 26 were genuine or counterfeit. The following colloquy then occurred:

> THE COURT: The jury have been instructed once, and I will instruct you again that the defendant is on trial accused of passing and uttering two counterfeit obligations only, one at Lowell, Dodge County, and the other at Astico, Dodge County. If he passed or had anything to do with passing counterfeit obligations elsewhere, it has nothing to do whatever with this case. That evidence was received only on the question of his knowledge or intent, only on that question (G. App. 301).[2]

Petitioner's counsel complained that the court's instruction was prejudicial and moved for a mistrial, which was denied (Pet. 8). Shortly thereafter, the court stated (G. App. 301):

> Members of the jury, it just occurred to me that a while ago I did not give you a complete instruction when I was talking about incidents other than the alleged incidents at Lowell and Astico. If, and only if, the Government has convinced you beyond a reasonable doubt that the defendant passed counterfeit securities at either of the two places charged in this indictment; and only if you are convinced that he did so, then

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[2] "G. App." refers to the Government's Appendix.

> you can consider that evidence only on the question of intent to defraud and on the question of whether he had knowledge they were counterfeit. That evidence has no place in consideration of the question as to whether he attempted to pass or did pass counterfeit securities in these two places named in the indictment.

The argument that the initial statement was so erroneous that it could not be corrected is, we submit, without merit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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